

AN ORDINANCE
BY CITY UTILITIES COMMITTEE

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A FRANCHISE AGREEMENT BETWEEN THE CITY OF ATLANTA AND COMCAST OF GEORGIA/VIRGINIA, INC., FOR THE PURPOSE OF RENEWING THE CABLE FRANCHISE GRANTED FOR THE CONSTRUCTION, RECONSTRUCTION, OPERATION, AND MAINTENANCE OF A CABLE COMMUNICATIONS SYSTEM WITHIN THE CITY; AND FOR OTHER PURPOSES.

WHEREAS, the City is authorized to grant one or more non-exclusive, revocable franchises to construct, reconstruct, operate, and maintain a cable communications system to provide cable services within the City; and

WHEREAS, following negotiations pursuant to federal law, and after the City's consideration of the compliance of the franchise holder with the material terms of the franchise and with applicable law, of the quality of the franchise holder's service, and of its financial, legal, and technical ability to provide the service, facility, and equipment set forth in its proposal, the parties have agreed on the terms and conditions of the renewal of said franchise.

NOW, THEREFORE, BE AND IT IS HEREBY ORDAINED BY THE COUNCIL OF THE CITY OF ATLANTA, as follows:

Section 1: The Mayor is hereby authorized to execute a franchise agreement in substantially the form attached hereto as Exhibit A and incorporated herein by reference.

Section 2: The City Attorney is hereby directed to prepare any additional documents required to effect such renewal, which documents shall not become binding on the City and the City shall incur no liability on same until such documents have been executed by the Mayor and delivered to the contracting party.

Section 3: All ordinances or parts of ordinances in conflict herewith are hereby waived to the extent of any such conflict.

Part II: Legislative White Paper: (This portion of the Legislative Request Form will be shared with City Council members and staff)

A. To be completed by Legislative Counsel:

Committee of Purview:

Caption: AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A FRANCHISE AGREEMENT BETWEEN THE CITY OF ATLANTA AND COMCAST OF GEORGIA/VIRGINIA, INC., FOR THE PURPOSE OF RENEWING THE CABLE FRANCHISE GRANTED FOR THE CONSTRUCTION, RECONSTRUCTION, OPERATION, AND MAINTENANCE OF A CABLE COMMUNICATIONS SYSTEM WITHIN THE CITY; AND FOR OTHER PURPOSES

Council Meeting Date: July 20, 2009

Requesting Dept.: Dept of Executive Offices

FAC Confirmed by:

B. To be completed by the department:

1. Please provide a summary of the purpose of this legislation (Justification Statement).

Example: The purpose of this legislation is to anticipate funds from a local assistance grant to purchase child safety seats.

The purpose of this legislation is to authorize the mayor to execute a franchise agreement with Comcast of Georgia/Virginia, Inc. for the purpose of renewing cable franchise for the construction and maintenance of a cable communication system.

2. Please provide background information regarding this legislation.

Example: The task force of homelessness conducted a study regarding homelessness, its impact and consequences on the City. This resolution reflects the Mayor's desire to open a twenty-four hour center that will respond to the needs of the homelessness in Atlanta.

3. If Applicable/Known:

(a) **Contract Type (e.g. Professional Services, Construction Agreement, etc):** NA

(b) **Source Selection:**

(c) Bids/Proposals Due:

(d) Invitations Issued:

(e) Number of Bids:

(f) Proposals Received:

(g) Bidders/Proponents:

(h) Term of Contract:

4. Fund Account Center (*Ex. Name and number*):

Fund: _____ Account: _____ Center: _____

5. Source of Funds: *Example: Local Assistance Grant*

6. Fiscal Impact:

Example: This legislation will result in a reduction in the amount of _____ to Fund Account Center Number _____.

7. Method of Cost Recovery:

Examples:

a. Revenues generated from the permits required under this legislation will be used to fund the personnel needed to carry out the permitting process.

b. Money obtained from a local assistance grant will be used to cover the costs of this Summer Food Program.

This Legislative Request Form Was Prepared By:

Martin Han Clarke

Franchise Agreement

Between: the

City of Atlanta, Georgia

and

Comcast of Georgia/Virginia, Inc.

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1 -- GRANT OF AUTHORITY	1
SECTION 2 -- COMPETITIVE EQUITY	2
SECTION 3 -- THE SYSTEM	3
SECTION 4 -- PUBLIC, EDUCATIONAL AND GOVERNMENT ACCESS.....	4
SECTION 5 -- CUSTOMER SERVICE; SUBSCRIBER BILLS AND PRIVACY PROTECTION	6
SECTION 6 -- COMPENSATION	7
SECTION 7 -- OVERSIGHT AND REGULATION.....	9
SECTION 8 -- ENFORCEMENT	10
SECTION 9 -- ASSIGNMENT AND TRANSFERS.....	11
SECTION 10 -- INSURANCE AND INDEMNITY	12
SECTION 11 -- MISCELLANEOUS	14
APPENDICES	

AGREEMENT

This **AGREEMENT**, executed as of the ____ day of ____, 2009 (the "Effective Date"), by and between City of Atlanta (hereinafter referred to as the "Franchising Authority"), and Comcast of Georgia/Virginia, Inc., whose principal place of business is located at 2925 Courtyards Drive, Norcross, Georgia 30071, (hereinafter referred to as the "Company").

WITNESSETH:

In consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby covenant and agree as follows:

SECTION 1 GRANT OF AUTHORITY

1.1 Grant of Franchise. The Franchising Authority hereby grants under the Cable Act a nonexclusive franchise (the "Franchise") to occupy and use the Streets within the Franchise Area in order to construct, operate, maintain, upgrade, repair and remove the System, and provide Cable Services through the System, subject to the terms and conditions of this Agreement. Nothing in this Franchise shall be construed to authorize or prohibit the Company from offering any service over its Cable System that is not prohibited by federal, state or local law

1.2 Term of Franchise. The Franchise shall commence upon the Effective Date and shall remain in effect for a period of seven (7) years from the Effective Date, unless terminated pursuant to this Agreement.

1.3 Renewal. Subject to Section 626 of the Cable Act (47 U.S.C. § 546) and such terms and conditions as may lawfully be established by the Franchising Authority, the Franchising Authority reserves the right to grant or deny renewal of the Franchise.

1.4 Reservation of Authority. Nothing in this Agreement shall (i) abrogate the right of the Franchising Authority to perform any public works or public improvements of any description, (ii) be construed as a waiver of any codes or ordinances of the Franchising Authority or of the Franchising Authority's right to require the Company or any Person utilizing the System to secure the appropriate permits or authorizations for such use, or (iii) be construed as a waiver or release of the rights of the Franchising Authority in and to the Streets.

1.5 Definitions – For purposes of the Agreement terms, unless defined below, phrases, words, and their derivations shall have the meanings set forth in the Cable Act [Title VI of the Communications Act of 1934 as amended, 47 U.S.C. §§ 521 et seq.]

1.5.1 Gross Revenues means means all revenues received from subscribers for the provision of cable service or video service, including franchise fees for cable service providers and video service providers, and advertising and home shopping services revenues and shall be determined in accordance with generally accepted accounting principles. Gross revenues shall not include:

(A) Amounts billed and collected as a line item on the subscriber's bill to recover any taxes, surcharges, or governmental fees that are imposed on or with respect to the services provided or measured by the charges, receipts, or payments therefore; provided, however, that for purposes of this Code section, such tax, surcharge, or governmental fee shall not include any ad valorem taxes, net income taxes, or generally applicable business or occupation taxes not measured exclusively as a percentage of the charges, receipts, or payments for services;

(B) Any revenue, such as bad debt, not actually received, even if billed;

(C) Any revenue received by any affiliate or any other person in exchange for supplying goods or services used by the provider to provide cable service or video programming;

(D) Any amounts attributable to refunds, rebates, or discounts;

(E) Any revenue from services provided over the network that are associated with or classified as noncable or nonvideo services under federal law, including, without limitation, revenues received from telecommunications services, information services other than cable service or video service, Internet access services, or directory or Internet advertising revenue, including, without limitation, yellow pages, white pages, banner advertisements, and electronic publishing advertising. Where the sale of any such noncable or nonvideo service is bundled with the sale of one or more cable services or video services and sold for a single non-itemized price, the term 'gross revenues' shall include only those revenues that are attributable to cable service or video service based on the provider's books and records; such revenues shall be allocated in a manner consistent with generally accepted accounting principles;

(F) Any revenue from late fees not initially booked as revenues, returned check fees, or interest;

(G) Any revenue from sales or rental of property, except such property as the subscriber shall be required to buy or rent exclusively from the cable service provider or video service provider to receive cable service or video service;

(H) Any revenue received from providing or maintaining inside wiring;

(I) Any revenue from sales for resale with respect to which the purchaser shall be required to pay a franchise fee, provided the purchaser certifies in writing that it shall resell the service and pay a franchise fee with respect thereto; or

(J) Any amounts attributable to a reimbursement of costs including, but not limited to, the reimbursements by programmers of marketing costs incurred for the promotion or introduction of video programming.

1.5.2 "Service Area" 'Video service provider' shall have the same meaning as that established in Georgia's Consumer Choice for Television Act [O.C.G.A. § 36-76-2 (13) et. seq.]

1.5.3 'Video service provider' shall have the same meaning as that established in Georgia's Consumer Choice for Television Act [O.C.G.A. § 36-76-2 (17)]

1.6 Company shall abide by the Equal Business Opportunity Ordinance of the City Code of Ordinances

SECTION 2 COMPETITIVE EQUITY

2.1 Purposes. The Company and the Franchising Authority acknowledge that there is increasing competition in the video marketplace among cable operators, direct broadcast' satellite providers, telephone companies, broadband content providers and others; new technologies are emerging that enable the provision of new and advanced services to City residents; and changes in the scope and application of the traditional regulatory framework governing the provision of video services are being considered in a variety of federal, state and local venues. To foster an environment where video service providers using the Streets can compete on a competitively neutral and nondiscriminatory basis;-encourage the provision of new and advanced services to City residents; promote local communications infrastructure investments and economic opportunities in the Franchise Area; and provide flexibility in the event of subsequent changes in the Law, the Company and the Franchising Authority have agreed to the provisions in this Section 2, and they should be interpreted and applied with such purposes in mind.

2.2. Fair Terms for all Providers—

2.2.1 Notwithstanding any other provision of this Agreement or any other provision of Law, if any Video Service Provider ("VSP") or Cable Service Provider ("CSP") enters into any agreement with the Franchising Authority to provide Video Services or Cable Services to subscribers in the Franchise Area, the Franchising Authority, upon written request of the Company, shall permit the Company to construct and operate its Cable System and to provide Video Services or Cable Services to subscribers in the Franchise Area under the same agreement and/or under the same terms and conditions as apply to the new VSP or CSP. The Company and the Franchising Authority shall enter into an agreement or other appropriate authorization (to the extent the Company determines such an agreement or authorization is necessary) containing the same terms and conditions as are applicable to the VSP or CSP within sixty (60) days after the Company submits a written request to the Franchising Authority. If there is no written agreement or other authorization between the new VSP or CSP and the Franchising Authority, the Company and the Franchising Authority shall use the sixty (60) day period to develop and enter into an agreement or other appropriate authorization {to the extent the Company determines such an agreement or authorization is necessary) that to the maximum extent possible contains provisions that will ensure competitive equity between the Company and other VSPs or CSPs, taking into account the terms and conditions under which other VSPs are allowed to provide Video Services or Cable Services to subscribers in the City

2.2.2 Franchising Authority shall at all times enforce its Rights-of-Way Ordinance and Federal ban on providing cable services without a franchise. Such enforcement efforts shall be continuous and diligent and the Franchising Authority's best efforts, including litigation. Should Franchising Authority not commence enforcement efforts within sixty (60) days of becoming aware of a VSP or CSP providing services within the Franchised Area, the Company shall have the right to petition the Franchising Authority to the relief provided in paragraph 2.2.1 above.

2.2.3 This section shall not apply to VSPs or CSPs providing Cable or Video Services in the Franchise Area under the authorization of the Consumer Choice for Television Act (O.C.G.A. 36-76 et. al.).

2.3 Subsequent Change in Law. If there is a change in federal, state or local Law that provides for a new or alternative form of authorization for a VSP or CSP that uses any part of the Franchising Authority's rights-of-way to provide Video Services or Cable Services to subscribers in the Franchise Area, or that otherwise changes the nature or extent of the obligations that the Franchising Authority may request from or impose on a VSP or CSP providing Video Services or Cable Services to subscribers in the Franchise Area, the Franchising Authority agrees that, notwithstanding any other provision of Law, upon the written request and at the option of the Company, the Franchising Authority shall: (i) permit the Company to provide Video Services or Cable Services to subscribers in the City on the same terms and conditions as are applicable to a VSP or CSP under the changed Law; (ii) modify this Agreement to comply with the changed Law; or (iii) modify this Agreement to ensure competitive equity between the Company and other VSPs or CSPs, taking into account the conditions under which other VSPs or CSPs are permitted to provide Video Services or Cable Services to subscribers in the Franchise Area. The Franchising Authority and the Company shall implement the provisions of this Section (2.3) within sixty (60) days after the Company submits a written request to the Franchising Authority. Notwithstanding any provision of Law that imposes a time or other limitation on the Company's ability to take advantage of the changed Law's provisions, the Company may exercise its rights under this Section 2.3 at any time, but not sooner than thirty (30) days after the changed Law goes into effect.

2.4 Effect on This Agreement. Any agreement, authorization, right or determination to provide Video Services or Cable Services to subscribers in the Franchise Area under the foregoing section shall supersede this Agreement, and the Company, at its option, may terminate this Agreement or portions thereof, upon written notice to the Franchising Authority, without penalty or damages.

SECTION 3 THE SYSTEM

3.1 The System and Its Operations

3.1.1. System. The Company, as of the Effective Date of this Franchise Agreement, maintains and operates a 750 MHz system capable of providing over 250 Channels of video programming which Channels may be delivered by analog, digital or other transmission technologies.

3.1.2. System Technical Standards. Throughout the term of this Agreement, the System shall be designed, maintained and operated such that quality and reliability of System Signal will be in compliance with all applicable Consumer Electronics Equipment Compatibility Standards including but not limited to Section 624A of the Cable Act as may be amended from time to time.

3.1.3. Testing Procedures; Technical Performance. Throughout the term of this Agreement, the Company shall operate and maintain the System in accordance with the testing procedures and the technical performance standards of the FCC.

3.2 Requirements With Respect to Work on the System

3.2.1 General Requirements. The Company shall comply with ordinances and/or rules and regulations established by the Franchising Authority pursuant to the lawful exercise of its police powers and generally applicable to all users of the Streets.

3.2.2 Protection of Underground Utilities. Both the Company and the Franchising Authority shall comply with Chapter 25-9 of the Official Code of Georgia Annotated, relating to notification prior to excavation near underground utilities, as now or hereafter amended.

3.3 Connecting Public Buildings

3.3.1 Installation -- Upon request, Company shall make one standard installation of an outlet free of charge to municipal buildings, public schools and public libraries located within 125 feet from the Company's activated distribution point of connection.

3.3.2 Service Company shall also continue to provide complimentary basic cable service to the one outlet referenced above in each municipal building, public school and public library located within 125 feet from the Company's activated distribution point of connection.

3.4 InterConnection with other Cable and Video Providers

3.4.1 Company shall interconnect with other cable and video systems operated in the Atlanta MSA as required by the Consumer Choice for Television Act (O.C.G.A. § 36-76-8(i)). This section shall not be construed to mean that Company is solely responsible for all costs of said interconnections.

SECTION 4 PEG ACCESS

4.1 Channel Capacity.

4.1.1 Linear Channels. Throughout the term of this Agreement, the Company shall continue to dedicate up to six (6) channels for non-commercial, non-revenue generating public, educational and governmental ("PEG") use. PEG channels may be delivered

by analog, digital or other transmission technologies as determined by the Company in its sole discretion. The parties further agree that upon the request of a Subscriber, any additional equipment, not including the monitor/television that is required by subscribers to view such dedicated channels on one outlet shall be provided free of charge by Company. The choice of the said equipment shall be in the sole discretion of the Company.

Communication PEG Channel Availability. To the extent the Company opts to change the transmission technology by which PEG channels are delivered to subscribers thereby materially impacting their capability of receiving such PEG channels, the Company shall communicate such change by doing the following:

(i) Provide written notice to operators of the respective PEG channels at least thirty (30) days prior to the conversion date;

(ii) Provide notice to subscribers via a message on subscriber's bills up to thirty (30) days prior to and thirty (30) days following the conversion date;

(iii) Distribute a public service announcement describing such changes on the Expanded Basic tier of channels for up to thirty (30) days prior to and thirty (30) days following the conversion date; and

(iv) Facilitate the placement of a crawl on the Weather Channel describing such changes up to thirty (30) days prior to and thirty (30) days following the conversion date.

4.1.2 Non-Linear Capacity. The Franchising Authority may determine that the community needs and interests may be served using video on demand, video streaming or other transmission technology. Upon thirty (30) days advance written request of the City, the Company shall make available up to two (2) hours of capacity on its video on demand platform for government access use. The Franchising Authority may change the content as needed, but Company retains the right to recover its reasonable expenses should city change programming more than once every sixty (60) days.

4.2 Programming Obligations. With the exception of the Government Channel, Franchising Authority certifies and commits to producing fifteen (15) hours per month of non duplicative original programming for three consecutive months on each of the activated PEG channels. Should the City fail to maintain fifteen (15) hours of programming per month threshold for any three (3) consecutive month period, then the Company may reclaim the channel capacity for its own use.

4.2.1 Additional Channel – Company shall provide an additional PEG channel when the non-duplicated original programming on a given channel exceeds 56 hours per week, as measured on a quarterly basis. The additional channel shall not be used for any purpose other than to continue programming additional government, education, or public access television.

4.2.2 For purposes of this agreement, original programming includes programming produced specifically for, about, or by, the City of Atlanta or citizens thereof. Furthermore, programming shall not be comprised predominantly of programming that is:

- A) character generated messages,
- B) video bulletin board messages,
- C) traffic cameras or other passively produced content.

4.3 No Liability. The Company shall have no liability nor shall be required to provide indemnification to Franchising Authority for PEG access programming cablecast over the System.

4.4 Public Access Support. The Company shall make payments as required by Section 11.4 of the franchise agreement dated November 24, 1994 through December 31, 2009. After December 31, 2009, the Company shall have no obligation to make public access support payments of any kind.

4.5 PEG Support. Within sixty (60) days of execution of this Agreement, the Company shall make a one time payment of Five Hundred Thousand Dollars (\$500,000) to the Franchising Authority for PEG support as determined by the City. The Franchising Authority and Company agree that Company may pass this PEG Grant directly through to subscribers as an individual line item in accordance with 47 U.S.C. §542 or other applicable law. Such grant relieves the Company from any further capital expenditures related to PEG Access in the Franchise Area for the term of this Agreement.

SECTION 5 CUSTOMER SERVICE AND PRIVACY PROTECTION

5.1 Customer Service. The Company shall comply with customer service standards 47 C.F.R § 76.309 (c) as may be amended from time to time.

5.2 Privacy. The Company shall fully comply with the privacy rights of subscribers including but not limited to those contained in the Cable Act Section 631 (47 U.S. C. Sec. 551) as may be amended from time to time.

SECTION 6 COMPENSATION AND OTHER PAYMENTS

6.1 Compensation to the Franchising Authority. As compensation for the Franchise, the Company shall pay, or cause to be paid, to the Franchising Authority the amounts set forth in this Section 6.1.

6.1.1 Franchise Fees - Amount. The Company shall pay to the Franchising Authority franchise fees in an amount equal to five (5) percent of Gross Revenue derived from the operation of the System to provide Cable Services in the Franchise Area.

6.1.2 Franchise Fees - Payment. All such payments of franchise fees shall be made on a quarterly basis and shall be remitted simultaneously with the submission of the Company's franchise fee report required pursuant to Section 6.1.3.

6.1.3 Company to Submit Franchise Fee Report. The Company shall submit to the Franchising Authority a report not later than thirty (30) days after the last day of March, June, September and December throughout the term of this Agreement setting forth the Gross Revenue for the period ending on said last day.

6.1.4 Franchise Fee Payments Subject to Audit; Remedy for Underpayment. No acceptance of any franchise fee payment by the Franchising Authority shall be construed as an accord and satisfaction that the amount paid is in fact the correct amount or a release of any claim that the Franchising Authority may have for further or additional sums payable under this Agreement. Franchising Authority may conduct audit no more than once annually to ensure payments in accordance with the terms and conditions of the franchise agreement. The look back period of any audit period shall be limited to three years following the end of the quarter of the most recent franchise fee payment. Once any audited period of the Company has been the subject of a requested audit, such audited period shall not again be the subject of any audit.

6.2 Payments Not To Be Set Off Against Taxes or Vice Versa. The parties agree that the compensation and other payments to be made pursuant to this Section 6 of this Agreement are not a tax and are not in the nature of a tax. Company and Franchising Authority agree that franchise fee payments required under this Agreement shall be in lieu of any permit fees and occupational license fees as required by the Franchising Authority. The 'Franchising Authority and the Company further agree that no additional taxes, licenses, fees, surcharges or other assessments shall be assessed on the Company for or with respect to the use of the Streets nor shall the Franchising Authority levy any other tax, license, fee or assessment on the Company or its Subscribers that is not generally imposed and applicable to a majority of all other businesses.

6.3 Interest, On Late Payments. If any payment required by this Agreement is not actually received by the Franchising Authority on or before the applicable date fixed in this Agreement, the Company shall pay interest thereon, from the due date to the date paid at rates published by the Internal Revenue Service for tax refunds and additional tax payments for the period of delinquency. . In addition, should such an underpayment be established to exceed eight (8%) of any payment due, the Franchising Authority may recover all reasonable expenses associated with establishing the underpayment.

SECTION 7 OVERSIGHT AND REGULATION

7.1 Reports. At the request of the Franchising Authority and subject to Section 631 of the Cable Act, as may be amended from time to time, the Company shall promptly submit to the Franchising Authority such information as the Franchising Authority may request regarding the Company's compliance with any term or condition of this Agreement.

7.2 File for Public Inspection. Throughout the term of this Agreement, the Company shall maintain, in a file available for public inspection during normal business hours, those documents required pursuant to the FCC's rules and regulations.

7.3 Treatment of Proprietary Information. To the extent permitted by law, including but not limited to Georgia Open Records Act (Q.C.G.A. § 50-1870 et seq.) the Franchising

Authority agrees to treat as confidential any requested records submitted to the Franchising Authority that are labeled as Confidential or Trade Secret by the Company prior to submission. In the event that any other Person requests such marked records, including requests pursuant to the Georgia Open Records Act, the Franchising Authority shall notify the Company of such request as soon as practicable prior to the release of such information, by email or facsimile to the addresses provided in Section 11.5 hereof, so that the Company may take appropriate steps to protect its interests in the requested records, including seeking an injunction against the release of such requested records. Upon receipt of said notice, the Company may review the requested records in the Franchising Authority's possession and designate as "Confidential" or "Trade Secret" such additional portions of the requested records as contain confidential or proprietary information.

SECTION 8 ENFORCEMENT

8.1 Notice of Violation. Where possible the Franchising Authority shall first informally discuss any non-compliance issue with the Company, and should such discussion not lead to a resolution of the problem, the Franchising Authority shall notify the Company in writing of the nature of the alleged non-compliance ("Violation Notice").

8.2 Company's Right to Cure or Respond. Company shall have thirty (30) days from the receipt of a Violation Notice, which notifies the Company in writing of the nature of the alleged non compliance to either respond, cure alleged noncompliance or if by the nature of the complained of event cannot be cured within a thirty (30) day period, Company shall in writing initiate reasonable steps to remedy the matter and provide Franchising Authority a projected resolution date.

8.2.1 This Agreement shall not be read to limit the ability of Franchising Authority to provide a longer period of time in which Company shall respond to a Violation Notice, or to extend that amount of time established in the original Violation Notice.

8.3 Hearing. If the Company fails to respond to the Violation Notice received from the Franchising Authority, or the alleged matter of noncompliance is not remedied within the cure period set forth above, the Franchising Authority's governing body shall schedule a hearing if it intends to continue its investigation into the matter. The Franchising Authority shall provide the Company at least thirty (30) days prior written notice of such hearing, which specifies the time, place and purpose of such hearing. The Company shall have the right to present evidence and to question witnesses. The Franchising Authority shall determine if the Company has committed a violation and shall make written findings of fact relative to its determination.

8.3.1 If the violation is found, the Company shall be subject to any police powers authority petition for reconsideration before any competent tribunal having jurisdiction over such matters.

8.4 Enforcement. Subject to applicable federal and State law, in the event the Franchising Authority, after the hearing set forth above, determines that the Company is in default of the provisions addressed in the Violation Notice, the Franchising Authority may:

- (a) Seek specific performance; or
- (b) Commence an action at law for monetary damages or seek other equitable relief; or
- (c) In the case of a substantial default of a material provision of the Franchise, Franchising Authority may seek to revoke the Franchise itself in accordance with subsection 8.5 below.

8.5 Revocation. Prior to the revocation or termination of the Franchise, the Franchising Authority shall give written notice to the Company of its intent to revoke the Franchise Agreement and the basis of noncompliance by the Company. The notice shall set forth the exact nature of the noncompliance. The Company shall have thirty (30) days from such notice to either object in writing and to state its reasons for such objection and provide an explanation or to cure the alleged noncompliance. If the Franchising Authority has not received a satisfactory response from the Company it may then seek to revoke the Franchise at a public hearing. The Company shall be given at least thirty (30) days prior written notice of such public hearing, specifying the time and place of such hearing and stating its intent to revoke the franchise.

(a) At the hearing, the Franchising Authority's governing board shall give the Company an opportunity to state its position on the matter, present evidence and question witnesses, after which it shall determine whether or not the Franchise shall be revoked. The public hearing shall be on the record and a written transcript shall be made available to the Company within ten (10) business days. The decision of the Franchising Authority's governing board shall be made in writing and shall be delivered to the Company. The Company may appeal such determination to an appropriate court, which shall have the power to review the decision of the Franchising Authority's Governing Board de novo. The Company may continue to operate the Cable System until all legal appeals procedures have been exhausted.

(b) Notwithstanding the above provisions, the Company does not waive any of its rights under federal law or regulation.

SECTION 9

ASSIGNMENTS AND OTHER TRANSFERS

9.1. Transfer. The Franchise shall be fully transferable to any successor in interest to the Company. A notice of transfer shall be filed by the Company to the City within forty-five (45) days of such transfer. The transfer notification shall consist of an affidavit signed by an officer or general partner of the transferee that contains the following:

- (a) An affirmative declaration that., the application shall comply with the terms and conditions of this Agreement, all applicable federal, state laws and regulations, including municipal and county ordinances regarding the placement and maintenance of facilities in the public rights-of-way that are generally applicable to users of the public right of way specifically including Chapter 9, Title 25 of the Georgia Utility Facility Protection Act;
- (b) A description of the transferee's service area;
- (c) The location of the transferee's principal place of business and the names or names of the principal executive officer or officers of the transferee; and

SECTION 10 INSURANCE AND INDEMNITY

10.1 Insurance

10.1.1 Specifications.

(a) Liability Insurance. Throughout the term of this Agreement, the Company shall, at its own cost and expense, maintain a liability insurance policy or policies and provide the Franchising Authority with certificate(s) of insurance demonstrating that the Company has obtained the insurance required in the City's Right of Way Ordinance or comparable to that being required of other users of the Streets

(b) Workers' Compensation. The Company shall ensure its compliance with the Georgia Workers' Compensation Act and in that regard shall secure insurance to cover its obligations with respect to workers' compensation claims, or take other appropriate steps, which insurance and steps shall be in form and substance reasonably satisfactory to the Franchising Authority. The Company shall indemnify and hold harmless the Franchising Authority from any workers' compensation claims to which the Company may become subject during the term of this Agreement.

10.2 Liability and Indemnity. In accordance with Section 635A of the Cable Act, as may be amended, the Franchising Authority, its officials, employees, members or agents shall have no liability to the Company arising from the regulation of Cable Service or from a decision of approval or disapproval with respect to a grant, renewal, transfer, or amendment of this Franchise. Any relief to the extent such relief is required by any other provision of Federal State law, shall be limited to injunctive relief and declaratory relief.

SECTION 11 MISCELLANEOUS

11.1 Controlling Authorities. This Agreement is made with the understanding that its provisions are controlled by the Cable Act, other federal laws, state laws, and all applicable local laws, ordinances, and regulations. To the extent such local laws, ordinances or regulations conflict with the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail, except where such conflict arises from the Franchising Authority's lawful exercise of its police powers. Any changes modifications or amendments to this Agreement must be made in writing and signed by both the Company and the Franchising Authority.

11.2 Appendices. The Appendices to this Agreement, attached hereto, and all portions thereof and exhibits thereto, are, except as otherwise specified in such Appendices, incorporated herein by reference and expressly made a part of this Agreement.

11.3 Governmental Powers. The Franchising Authority expressly reserves the right to exercise the full scope of its powers, including both its police power and contracting authority, to promote the public interest and to protect the health, safety and welfare of the citizens of the City of Atlanta, Georgia.

11.4 Entire Agreement. This Agreement, including all Appendices, embodies the entire understanding and agreement of the Franchising Authority and the Company with respect to the subject matter hereof and merges and supersedes all prior representations, agreements, and understandings, whether oral or written, between the Franchising Authority and the Company with respect to the subject matter hereof, including, without limitation, all prior drafts of this Agreement and any Appendix to this Agreement and any and all written or oral statements or representations by any official, employee, agent, attorney, consultant or independent contractor of the Franchising Authority or the Company. All ordinances or parts of ordinances or other agreements between the Company and the Franchising Authority that are in conflict with the provisions of this Agreement are hereby declared invalid and superseded.

11.5 Notices. All notices shall be in writing and shall be sufficiently given and served upon the other party by first class mail, registered or certified, return receipt requested, postage prepaid, or via facsimile (with confirmation of transmission) and addressed as follows:

with a copy to:

THE FRANCHISING AUTHORITY:

Office of the Mayor
City of Atlanta
55 Trinity Avenue
Atlanta, Georgia 30301

COMPANY:

Comcast of Georgia/Virginia, Inc.
2925 Courtyards Drive
Norcross, Georgia 30071
Attention: Vice President, Government Affairs
Facsimile: 770-559-7623

Comcast Cable Communications, Inc. Attn:
Vice President, Government Affairs 600
Galleria Parkway Suite 1100
Atlanta, Georgia 30339
Facsimile: 678-385-5101

and:

Comcast Cable Communications, Inc.
Attn: Legal Dept.
1500 Market Street
Philadelphia, PA 19102
Facsimile: 215-640-4050

11.6 Additional Representations and Warranties. In addition to the representations, warranties, and covenants of the Company to the Franchising Authority set forth elsewhere herein, the Company represents and warrants to the Franchising Authority and covenants and

agrees (which representations, warranties, covenants and agreements shall not be affected or waived by any inspection or examination made by or on behalf of the Franchising Authority) that, as of the Effective Date:

11.6.1 Organization, Standing, and Authorization. The Company is a corporation validly existing and in good standing under, the laws of the State of Colorado and is duly authorized to do business in the State of Georgia and in the Franchise Area.

11.6.2 Compliance with Law. The Company, to the best of its knowledge, is in substantial compliance with all material laws, ordinances, decrees and governmental rules and regulations applicable to the System and has obtained all government licenses, permits, and authorizations necessary for the operation and maintenance of the System.

11.7 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted transferees and assigns.

All of the provisions of this Agreement apply to the Company, its successors, and assigns.

11.8 No Waiver; Cumulative Remedies. No failure on the part of the Franchising Authority or the Company to exercise, and no delay in exercising, any right or remedy hereunder including, without limitation, the rights and remedies set forth in Section 8, of this Agreement, shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or remedy preclude any other right or remedy, all subject to the conditions and limitations established in this Agreement. The rights and remedies provided herein including, without limitation, the rights and remedies set forth in Section 8 of this Agreement, are cumulative and not exclusive of any remedies provided by law, and nothing contained in this Agreement shall impair any of the rights or remedies of the Franchising Authority under applicable law, subject in each case to the terms and conditions of this Agreement.

11.9 Severability. If any section, subsection, sentence, clause, phrase, or other portion of this Agreement is, for any reason, declared invalid, in whole or in part, by any court, agency, commission, legislative body, or other authority of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent portion. Such declaration shall not affect the validity of the remaining portions hereof, which other portions shall continue in full force and effect.

11.10 No Agency. The Company shall conduct the work to be performed pursuant to this Agreement as an independent entity and not as an agent of the Franchising Authority.

11.11 Governing Law. This Agreement shall be deemed to be executed in the City of Atlanta, State of Georgia, and shall be governed in all respects, including validity, interpretation and effect, and construed in accordance with, the laws of the State of Georgia.

11.12 Claims Under Agreement. The Franchising Authority and the Company, agree that, except to the extent inconsistent with Section 635 of the Cable Act (47 U.S.C. § 555), any and all claims asserted by or against the Franchising Authority arising under this Agreement or related thereto shall be heard and determined either in a court of the United States located in Georgia ("Federal Court") or in a court of the State of Georgia of appropriate jurisdiction. To effectuate this Agreement and intent, the Company agrees that if

the Franchising Authority initiates any action against the Company in Federal Court or in Georgia State Court, service of process may be made on the Company either in person-or by registered mail addressed to the Company at its offices as defined in Section 11.5, or to such other address as the Company may provide to the Franchising Authority in writing.

11.13 Modification. Either Party may at any time during the term of this Agreement seek a modification, amendment or waiver of any term or condition of this agreement. The burden of supporting any request is the responsibility of the requesting party. No provision of this Agreement nor any Appendix to this Agreement, shall be amended or otherwise modified, in whole or in part, except by an instrument, in writing, duly executed by the Franchising Authority and the Company, which amendment shall be authorized on behalf of the Franchising Authority through the adoption of an appropriate resolution, letter of agreement, or order by the Franchising Authority, as required by applicable law.

11.14 Delays and Failures Beyond Control of Company. Notwithstanding any other provision of this Agreement, the Company shall not be liable for delay in performance of, or failure to perform, in whole or in part, its obligations pursuant to this Agreement due to strike, war, or act of war (whether an actual declaration of war is made or not), insurrection, riot, act of public enemy, accident, fire, flood or other act of God, technical failure, sabotage or other events, where the Company has exercised all due care in the prevention thereof, to the extent that such causes or other events are beyond the control of the Company and such causes or events are without the fault or negligence of the Company. In the event that any such delay in performance or failure to perform affects only part of the Company's capacity to perform, the Company shall perform to the maximum extent it is able to do so and shall take all steps within its power to correct such cause(s). The Company agrees that in correcting such cause(s), it shall take all reasonable steps to do so in as expeditious a Manner as possible. The Company shall promptly notify the Franchising Authority in writing of the occurrence of an event covered by this Section 11.14.

11.15 Duty to Act Reasonably and in Good Faith. The Company and the Franchising Authority shall fulfill their obligations and exercise their rights under this Agreement in a reasonable manner and in good faith. Notwithstanding the omission of the words "reasonable," "good faith," or similar terms in the provisions of this Agreement, every provision of this Agreement shall be deemed subject to this section.

11.16 Contractual Rights Retained. Nothing in this Agreement is intended to impair the contractual rights of the Franchising Authority or the Company under this Agreement.

11.17 No Third Party Beneficiaries. Nothing in this Franchise or any prior agreement, is or was intended to confer third-party beneficiary status on any member of the public to enforce the terms of such agreements or Franchise.

IN WITNESS WHEREOF, the party of the first part, by its Mayor, thereunto duly authorized by the City Council, of said Franchising Authority, has caused the corporate name of said Franchising Authority to be hereunto signed and the corporate seal of said Franchising Authority to be hereunto affixed and the Company, the party of the second part, by its officers

thereunto-duly authorized,. has caused its name to be hereunto signed and its seal to be hereunto affixed as of the date and year first above written.

City of Atlanta, Georgia

By: _____
Name
Title: Major
(Seal)

Attest: _____

Comcast of Georgia/Virginia, Inc.

By:
Its general partner

By: _____
Name: John H. Ridall, Jr.
Title: President

Attest: _____

TRANSMITTAL FORM FOR LEGISLATION

TO: MAYOR'S OFFICE

ATTN: GREG PRIDGEON

Dept.'s Legislative Liaison: Greg Pridgeon

Contact Number: x 6115

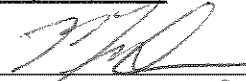
Originating Department: Dept of Executive Offices

Committee(s) of Purview: City Utilities Committee

Chief of Staff Deadline: July 2, 2009

Anticipated Committee Meeting Date(s): July 14 - 15, 2009

Anticipated Full Council Date: July 20, 2009

Legislative Counsel's Signature: 

Commissioner Signature: 

Chief Procurement Officer Signature: _____

CAPTION

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE A FRANCHISE AGREEMENT BETWEEN THE CITY OF ATLANTA AND COMCAST OF GEORGIA/VIRGINIA, INC., FOR THE PURPOSE OF RENEWING THE CABLE FRANCHISE GRANTED FOR THE CONSTRUCTION, RECONSTRUCTION, OPERATION, AND MAINTENANCE OF A CABLE COMMUNICATIONS SYSTEM WITHIN THE CITY; AND FOR OTHER PURPOSES.

FINANCIAL IMPACT (if any)

Mayor's Staff Only

Received by CPO: _____ Received by LC from CPO: _____
(date) (date)

Received by Mayor's Office:  7/1/09 Reviewed by: 
(date) (date)

Submitted to Council: _____
(date)